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14 SUCCESSFACTORS, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 SUCCESSFACTORS, INC. a Delaware
19 corporation,

20 Plaintiff,

21 v.

22 SOFTSCAPE, INC., a Delaware
23 corporation; and DOES 1-10,

24 Defendants.

Case No. C-08-1376 CW (BZ)

**MOTION FOR ADMINISTRATIVE RELIEF TO
FILE UNDER SEAL PORTIONS OF PLAINTIFF
SUCCESSFACTORS, INC.'S REPLY
MEMORANDUM IN SUPPORT OF ITS MOTION
TO COMPEL PRODUCTION OF DOCUMENTS,
FURTHER INTERROGATORY ANSWERS AND
PROPER PRIVILEGE LOGS; DECLARATION OF
HENRY Z. CARBAJAL III IN SUPPORT
THEREOF**

Date: September 3, 2008
Time: 10:00 a.m.
Judge: Hon. Bernard Zimmerman
Place: Courtroom G, 15th Floor

Date of Filing: July 30, 2008
Trial Date: May 11, 2009

Pursuant to Civil L.R. 7-11 and 79-5, Plaintiff SuccessFactors, Inc. (“SuccessFactors”) hereby moves the Court for an Order permitting it to file under seal in this Court certain limited portions of text within SuccessFactors’ Reply Memorandum in Support of Its Motion to Compel Production of Documents, Further Interrogatory Answers and Proper Privilege Logs (“Reply Brief”), which contain information that, as produced by Defendant Softscape, Inc. (“Softscape”), has been designated, at least in part, as confidential under the terms of the Stipulated Protective Order entered by the Court. (Dkt. No. 89.)

On August 20, 2008, SuccessFactors moved to seal portions of exhibits and exhibits to the Reply Declaration of Henry Z. Carbajal III in Support of Plaintiff SuccessFactors, Inc.’s Motion to Compel Production of Documents, Further Interrogatory Answers and Proper Privilege Logs. (See Dkt. No. 202.) It did not originally move to file portions of its Reply Brief under seal (Dkt. No. 200) in light of the Court’s August 19, 2008 Order denying in its entirety an earlier motion to seal. (Dkt. No. 197). In light of the Court’s August 27, 2008 amended order granting in part the July 31, 2008 motion to seal, SuccessFactors has taken steps to prevent public access to the Reply Brief on the Court’s ECF system, re-filed a redacted public version of the Reply Brief (Dkt. No. 214) and now moves to file portions of that Reply Brief under seal.

The specific portions of the Reply Brief at issue are as follows:

1. Page 9, lines 8-12 (ending at the case citation), and
2. Page 10, lines 21-22 (between the words “is” and “Thus”).

The above-cited portions of the Reply Brief contain information that, as produced by Softscape, was designated at least in part as “Outside Attorneys’ Eyes Only.”

Accordingly, SuccessFactors respectfully requests that the Court allow it to file the above-cited portions of its Reply Brief under seal in accordance with the request of Softscape, the Protective Order and Civil Local Rule 79-5.

Dated: August 28, 2008

FENWICK & WEST LLP

By: /s/Henry Z. Carbajal III
Henry Z. Carbajal III

Attorneys for Plaintiff SUCCESSFACTORS, INC.

DECLARATION OF HENRY Z CARBAJAL III

I, Henry Z Carbajal III, declare as follows:

1. I am an attorney with the law firm of Fenwick & West LLP, counsel of record for Plaintiff SuccessFactors, Inc. ("SuccessFactors"). I make this declaration based on my personal knowledge, except where otherwise indicated, and if I am called as a witness, I would and could testify competently to the matters contained herein.

2. On April 23, 2008, this Court entered a Protective Order pursuant to the stipulation of the parties. Pursuant to section 10 of that order, any document filed in this action which contains confidential information shall be filed under seal in accordance with Civil Local Rule 79-5.

3. SuccessFactors originally filed its Reply Memorandum in Support of Its Motion to Compel Production of Documents, Further Interrogatory Answers and Proper Privilege Logs ("Reply Brief") on August 20, 2008 (Dkt. No. 205) and, proceeding in light of the Court's August 19, 2008 Order denying in its entirety a July 31, 2008 motion to seal (Dkt. No. 197), did not move to seal any portions of its Reply Brief.

4. In light of the Court's August 27, 2008 amended order granting in part the July 31, 2008 motion to seal (Dkt. No. 212), SuccessFactors has taken steps to prevent public access to the Reply Brief on the Court's ECF system, re-filed a redacted public version of the Reply Brief (Dkt. No. 214) and now lodges an unredacted Reply Brief and moves to file portions of that Reply Brief under seal.

5. Accordingly, SuccessFactors respectfully requests that it be allowed to file under seal the following portions of text within SuccessFactors' Reply Brief, re-submitted to the Court on August 28, 2008.

6. At least portions of information disclosed at page 9, lines 8-12 (ending at the case citation), and page 10, lines 21-22 (between the words "is" and "Thus") of the Reply Brief have, as produced by Defendant Softscape, Inc. ("Softscape"), been designated by Softscape as "Highly Confidential-Outside Attorneys' Eyes Only" under the Protective Order. Softscape thus maintains and has asserted to SuccessFactors that these portions of text contain confidential information disclosure of which would create a substantial risk of competitive harm or serious

1 injury that could not be avoided by less restrictive means. Softscape has requested that the above-
2 cited portions of the Reply Brief be filed under seal.

3 7. The lines of the Reply Brief cited above are the only portions of SuccessFactors'
4 Reply Brief to be filed under seal.

5 8. SuccessFactors will lodge with the Clerk sealed copies of the Reply Brief.

6 9. SuccessFactors will notify counsel for Defendant of their obligation to file a
7 declaration supporting the confidentiality of their information referenced above under Civil L.R.
8 79-5(d).

9 10. Pursuant to Civil L.R. 79-5, SuccessFactors intends to file publicly or withdraw
10 from the record any exhibits that it requested to be filed under seal based on the confidentiality
11 designations where such designation is withdrawn by the Defendants, or SuccessFactors' request
12 is denied by this Court.

13 I declare under penalty of perjury under the laws of the United States of America and the
14 State of California that the foregoing is true and correct. Executed this 28th day of August 2008
15 at Mountain View, California.

16 By: /s/Henry Z. Carbajal III
17 Henry Z. Carbajal III

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Case No. C-08-1376 CW (BZ)

**[PROPOSED] ORDER GRANTING PLAINTIFF'S
MOTION FOR ADMINISTRATIVE RELIEF TO
FILE UNDER SEAL PORTIONS OF PLAINTIFF
SUCCESSFACTORS, INC.'S REPLY
MEMORANDUM IN SUPPORT OF ITS MOTION
TO COMPEL PRODUCTION OF DOCUMENTS,
FURTHER INTERROGATORY ANSWERS AND
PROPER PRIVILEGE LOGS**

Date: September 3, 2008
Time: 10:00 a.m.
Judge: Hon. Bernard Zimmerman
Place: Courtroom G, 15th Floor

Date of Filing: July 30, 2008
Trial Date: May 11, 2009

**[PROPOSED] ORDER GRANTING PLAINTIFF'S
MOTION FOR ADMINISTRATIVE RELIEF TO FILE UNDER SEAL**

On this day, the Court considered Plaintiff SuccessFactors, Inc.'s ("SuccessFactors") Motion for Administrative Relief to File Under Seal Portions of Plaintiff SuccessFactors, Inc.'s Reply Memorandum in Support of Its Motion to Compel Production of Documents, Further Interrogatory Answers and Proper Privilege Logs ("Motion to Seal").

After due consideration, **IT IS HEREBY ORDERED AND ADJUDGED** that SuccessFactors' Motion to Seal is **GRANTED**.

IT IS FURTHER ORDERED that the following portions of Plaintiff SuccessFactors, Inc.'s Reply Memorandum in Support of Its Motion to Compel Production of Documents, Further Interrogatory Answers and Proper Privilege Logs are hereby **FILED UNDER SEAL**:

1. Page 9, lines 8-12 (ending at the case citation), and
2. Page 10, lines 21-22 (between the words "is" and "Thus").

IT IS SO ORDERED.

Dated: _____, 2008

Magistrate Judge Bernard Zimmerman
United States Magistrate Judge

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